

PETITIONER:
P.V. NARSIMHA RAO

Vs.

RESPONDENT:
STATE (CBI/SPE) ETC. ETC.

DATE OF JUDGMENT: 17/04/1998

BENCH:
G.N. RAY

ACT:

HEADNOTE:

JUDGMENT:

THE 17TH DAY OF APRIL, 1998

Present:

Hon'ble Mr. Justice S.C. Agrawal
Hon'ble Mr. Justice G.N. Ray
Hon'ble Mr. Justice A.S. Anand
Hon'ble Mr. Justice S.P. Bharucha
Hon'ble Mr. Justice S. Rajendra Babu

Ashok H. Desai, Attorney General, T.R. Andhyarujina, Solicitor General, P.P. Rao, Kapil Sibal, Dr. D.D. Thakur, Sr. Advs., Ranjit Kumar, Anu Mohla, I.C. Pandey, C.Paramasivam, Ajay Talesara, Jamshed Bey, Rakhi Roy, Ms. Bina Gupta, Dr. Surat Singh, Ashok Mahajan, P.P. Singh, Chandrashekar, Girish Ananthamurthy, B.Y. Kulkarni, Navin Prakash, Arun Bhardwaj, K.C. Kaushik, Manish Sharma, D. Prakash Reddy, L. Nageshwara Rao, Ms. Indu Malhotra, Rajiv Dutta, Akhilesh Kumar Pandey, Bharat Sangal, R.P. Wadhvani, P.K. Manohar, P. Parmeswaran, A.Mariarputham and Dr. S.C. Jain, Advs. with them for the appearing parties.

J U D G M E N T S

The following Judgments of the Court were delivered:

[With Crl. A. Nos. 1209/97, 1210-1212/97, 1213/97, 1214/97, 1215/97, 1216/97, 1217-18/97, 1219/97, 1220/97, 1221/97, 1222/97, 186/98 (Arising out of S.L.P. (Crl. No 2/98) and 187/98 (Arising out of S.L.P. (Crl.) No. 366/98)]

G.N. RAY, J.

I had the privilege of reading both the judgments - one by my learned brother Mr. Justice S.C. Agrawal and the other by learned brother Mr. Justice S.P. Bharucha. Though I respectfully concur with the findings of Mr. Justice Agrawal and agree with the reasonings for such findings that (1) a member of Parliament is a public servant under Section 2[c] of the Prevention of Corruption Act, 1988 and (2) since there is no authority competent to grant sanction for the prosecution of a Member of Parliament under Section 19[1] of the Prevention of Corruption Act 1988, the Court can take cognizance of the offences mentioned in Section 19[1] in the absence of sanction but before filing a chargesheet in respect of an offence punishable under Sections 7,10,11,12 and 15 of 1988 Act against a Member of Parliament in a criminal court, the prosecuting agency shall obtain the

permission of the Chairman of the Rajya Sabha/Speaker of the Lok Sabha, as the case may be, I have not been able to persuade myself to concur with the reasonings and the finding in the judgment of Mr. Justice Agrawal that a member of parliament does not enjoy immunity under Article 105(2) or 105(3) of the Constitution from being prosecuted before a criminal court for an offence involving offer or acceptance of bribe for the purpose of speaking or giving his vote in Parliament or in any committee thereof.

Article 105 of the Constitution deals with powers, privileges etc. of the Houses of Parliament and the members and committees thereof. Sub article (1) of Article 105 makes it evident that subject to the provisions of the Constitution and rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament. The provisions of Sub-article (1) Article 105 indicates in no uncertain term that the freedom of speech guaranteed under sub Article (1) of Article 105 is independent of the freedom of speech guaranteed under Article 19 of the Constitution and such freedom of speech under Article 105 (1) is not inhibited or circumscribed by the restrictions under Article 105 (1) is not inhibited or circumscribed by the restrictions under Article 19 of the Constitution. In order to ensure effective functioning of Parliamentary democracy, there was a felt need that a Member of Parliament will have absolute freedom in expressing his views in the deliberations made in the door of Parliament. Similarly he must enjoy full freedom in casting his vote in Parliament.

The protections to be enjoyed by a Member of Parliament as contained in Sub Article (2) of Article 105 essentially flows from the freedom of speech guaranteed under Sub-Article (1) of Article 105. Both the Sub-articles (1) and (2) compliment each other and indicate the true content of freedom of speech and freedom to exercise the right to vote envisaged in Article 105 of the Constitution. The expression "in respect of" appearing in several articles of the Constitution and in some other legislative provisions has been noticed in a number of decisions of this Court. The correct interpretation of the expression "in respect of" can not be made under any rigid formula but must be appreciated with references to the context in which it has been used and the purpose to be achieved under the provision in question. The context in which the expression "in respect of" has been used in sub article (2) of Article 105 and the purpose for which the freedom of speech and freedom to vote have been guaranteed in sub article (2) of Article 105 do not permit any restriction or curtailment of such right expressly given under sub article (1) and sub article (2) of Article 105 of the Constitution. It must, however be made clear that the protection under sub-article (2) of Article 105 of the Constitution must relate to the vote actually given and speech actually made in Parliament by a Member of Parliament. In any view, the protection against proceedings in court as envisaged under Sub-article (2) of Article 105 must necessarily be interpreted broadly and not in a restricted manner. Therefore, an action impugned in a court proceeding which has a nexus with the vote cast or speech made in Parliament must get the protection under sub-article (2) of Article 105. Sub-Article (3) of Article 105 provides for other powers, privileges and immunities to be enjoyed by a Member of Parliament. The framers of the Constitution did not catalogue such powers, privileges and immunities but provided in sub article (3) of Article 105 that until such privileges are defined by the Parliament, a

member of Parliament will enjoy such powers, privileges and immunities which had been recognised to be existing for a member of House of Commons at the commencement of the Constitution of India. As I respectfully agree with the reasonings indicated in the judgment of the learned brother Mr. Justice S.P. Bharucha that in the facts of the case, protection under Article 105(3) of the Constitution is not attracted but protection under Sub article (2) of Article 105 is available only to those accused, who as Members of Parliament had cast their votes in Parliament, I refrain from indicating separate reasonings in support of such finding.

JUDIS